

The background features a large, faint, light-green watermark of the United States Environmental Protection Agency (EPA) seal. The seal is circular, with the words "UNITED STATES" at the top and "ENVIRONMENTAL PROTECTION AGENCY" at the bottom. In the center is a stylized flower with five petals and a central stem with two leaves.

# **Special Accounts Senior Management Committee**

July 24, 2013



# Agenda

- Highlights Past 6 Months
- Superfund Remedial Program Review – Special Accounts
- Special Account Reclassifications and State Cost Share
- Accessing Indirect Costs in Special Accounts
- Upcoming Issues and Topics
- Review Action Items and Next Steps



## Highlights Past 6 Months

- Issued Special Accounts Management Strategy for 2013 – 2015 (March 2013)
- Developed a response to House Appropriations Committee FY 2013 report language (no longer required)
- Conducted special account FY 2013 mid-year reviews (April – June 2013)
- Resolution of accessing financial assurance pursuant to UAOs and depositing in special accounts
- Development of action plan to address Superfund Program Review recommendations
- Omaha Lead reclassification

# **Superfund Remedial Program Review – Special Accounts**

OSRTI





# Challenge and Context

## Overarching Goal

Maintain the Superfund Remedial Program's effectiveness in protecting human health and the environment by more efficiently managing its site cleanup process and program resources.

## Conditions

Decreasing budgets: cumulative \$140m reduction since 2011; sequestration

Administration interest in statutory/regulatory/policy ideas that would leverage state capabilities; demonstrate progress sooner, and make more efficient use of Superfund to maintain program accomplishments

Changing workforce and support tools



## Proposed Outcomes

- Build on Integrated Cleanup Initiative (ICI) efforts
- Identify cleanup efficiencies at the RI/FS stage (e.g., better scoping, early actions, presumptive approaches, etc.)
- Seek to streamline cleanups by integrating RD and RA (e.g., early constructor involvement, etc.)
- Apply adaptive management practice to site remediation
- **Maximize use of special accounts to preserve resources for fund-lead projects**
- Better leverage use of in-house resources



## SPR Subgroups

- **Process Groups**

- Pre-Listing
- RI/FS Process
- RD/RA Integration
- Adaptive Management
- 5 Year Review

- **Enabling Groups**

- In House Resources
- Budget
- **Special Accounts**
- Acquisitions
- Communications
- SEMS/IT





## SPR Process

- Each subgroup developed a draft Action Plan to address the recommendations from the Steering Committee.
- The Special Accounts subgroup was tasked with 5 recommendations.
- During discussion the subgroup identified related or other issues that the group decided would be brought to the Special Accounts Senior Management Committee.





# SPR Recommendations – Special Accounts

*Please see the issue paper developed to discuss the following recommendations and action plan*

## Recommendations 1 & 2

- Use special accounts for oversight costs

## Recommendation 3

- Use of in-house resources if special account funds can't be used for PRP-lead sites

## Recommendation 4

- Incentivize the closing out of old or low balance special accounts

## Recommendation 5

- Evaluate future work requirement for special accounts



## Subgroup Other Issues

*Please see the issue paper developed to discuss the following issues and proposed actions*

- Re-evaluate use of special accounts for the Contract Lab Program (CLP)
- Depositing payments into a special account after reclassification
- Use of the WQ bulk funding action code with special account funds
- Modify reclassification procedures to reduce number of accounting lines required
- Providing an assurance of future funding if funds are reclassified/transferred



## Next Steps

- Recap the decisions of the SASMC
- Coordinate with the SPR Steering Committee on next steps and action plan
- Communicate next steps and decisions with the Special Accounts subgroup



# **Special Account Reclassifications and State Cost Share**

OSRTI

Please also see paper, *“Proposed Process for Reducing  
State Cost Share Due to Special Account  
Reclassifications”*



## Background

- CERCLA 104 requires states to provide a 10% cost share for any appropriated funds expended for RA and LTRA costs (unless a 50% or more cost share is required).
- States are not required to provide a cost share for special account funds expended for RA and LTRA costs.
- Reclassification of RA and LTRA expenditures of appropriated funds with available special account funds decreases the amount of appropriated funds expended for RA and LTRA, and thus decreases the amount of cost share owed by a state.
- Receipts of funds from a state that exceed the cost share owed are considered overmatch by Subpart O regulations.
- Credits that exceed the cost share owed at the site are considered excess credits under Subpart O regulations.





## Background

- The 2009 Special Account Reclassification Guidance states the following on this issue:
  - “The Region should also consider the potential implications of reclassifying resources that were previously used to fund remedial action at the site where a state has previously paid a state cost share for that action. If the settlement under which EPA received the special account funds (which are now being reclassified) did not address allocation of settlement proceeds between EPA and that state, the Region should explain in the justification memorandum how they will address the reduction of Superfund appropriation resources and the state cost share.”
- RMDS Chapter 9, Financial Management of SSCs, states the following:
  - “Also, when reconciling the Superfund-financed remedial financial data, the region should consider special account reclassifications, if applicable, at the site and their effect on the state’s cost share amount.”
- OSRTI has received questions regarding how to address state cost share when reclassifying special account funds.





## Process to Address State Cost Share

- The State may direct EPA to dispose of overmatch by either 1) returning the funds to the state through a cash payment, or 2) allowing the state to use the funds for cost share at another site.
  - If state cost share funds (“TR1”) have already been obligated or expended, EPA would first have to make them available by replacing the appropriate amount of TR1 funds with special account funds (or appropriated funds if special account funds have been exhausted) to ensure that 90% of the remedy’s expenditures are from appropriated (“T”) funds and 10% are from TR1 funds.



## Process to Address State Cost Share, cont.

- EPA and the state must amend the SSC to reflect the decreased value of the Fund-financed remedy due to the reclassification, the associated reduction in cost share and any changes in cost share payment provisions.
- EPA would also have to adjust SSCs that have been closed out, through amendment or reconciliation documents.
- EPA would retroactively have to dispose of overmatch as directed by the State and adjust SSCs accordingly where reclassification has already occurred.
- EPA would have to assess whether credits that have already been applied at a site are, after reclassification, "excess credits."



# Settlement Proceeds Received by the State

- Exemption 5 - Deliberative Process  
[REDACTED]
- Exemption 5 - Deliberative Process  
[REDACTED]
- For the purposes of complying with the cost share requirement in CERCLA, it is immaterial where the state gets its cost share from (e.g., the state legislature or a settlement).





# Addressing State Cost Share through Cooperative Agreements

- Reclassifying expenditures on a cooperative agreement could result in either an overmatch (if the State is making cash payments to EPA for its cost share) or could result in excess credit at the site.
  - Where switching expenditures would create an overmatch (because the State had already made cash payments for its cost share), the state would have the discretion to ask for EPA to return the excess funds or to apply the overmatch to another site.
  - Where the State was submitting State expenditures for approval as credit, EPA would have to assess whether those credits are excess credits.
  - Where the State was paying its costs share under a cooperative agreement using services that are not direct, out of pocket expenditures for RA (and therefore eligible for credit), there would be no way to adjust the 90/10 split unless we adopted an accounting system to track those expenditures.



## Next Steps

- Identify those sites and special accounts where a reclassification has reduced appropriated RA expenditures and ensure regions have or will account for the decreased expenditures in the final SSC reconciliation
  - Exemption 5 - Deliberative Process [REDACTED]
- Begin to develop a guidance document to provide clarification for the regions on how state cost share should be addressed as a result of special account reclassifications
  - Exemption 5 - Deliberative Process [REDACTED]
- Determine whether changes to EPA's model settlement language may be required when states receive funds for their costs as part of the settlement



# **Accessing Indirect Costs in Special Accounts**

OCFO

Please also see paper, “*Special  
Accounts – Indirect Rates*”





## Background

- Agency bills its indirect rate to funds-in Interagency Agreements (IAs).
- EPA's indirect costs are typically collected as part of CERCLA settlement agreements.
- Special accounts are generally used to support only direct costs, such as payroll, contract, and grant expenditures for site response work.
- Model agreement language includes provision(s) for collecting indirect costs.



# Current OGC Opinion on Retaining and Using Funds in Special Accounts

- Exemption 5 - Attorney-Client Privilege



## Legal Analysis Required

- CERCLA 122(b)(3) states, “If, as part of any agreement, the President will be carrying out any action and the parties will be paying amounts to the President, the President may, notwithstanding any other provision of law, retain and use such amounts for purposes of carrying out the agreement.”
  - Exemption 5 - Deliberative Process [REDACTED]
  - Exemption 5 - Deliberative Process [REDACTED]





# Charging Indirect Cost Rates to Special Accounts

## Benefits

- Exemption 5 - Deliberative Process

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

## Potential Issues

- Exemption 5 - Deliberative Process

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



# Proposal

- Special Accounts Senior Management Committee approval to seek an OGC opinion on whether the Agency can access special accounts for the Agency's indirect costs.

# **Upcoming Issues and Topics**







# Upcoming Issues and Topics

- Transition to SEMS in Fall 2013
  - Training and instruction guide for special account planning screen
  - FY 2014 special account work planning to be conducted in CERCLIS
- Internal fact sheets
  - Charging payroll to special accounts
  - Managing deposits into special accounts
- External fact sheets
  - What are special accounts?
  - How are special accounts used?
  - How does EPA manage special accounts?
  - Frequently asked questions on special accounts



# **Review Action Items and Next Steps**